

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 11-2328

UNITED STATES,

Plaintiff-Appellee,

v.

DTE ENERGY CORP.

Defendant-Appellant.

**MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF NATURAL
RESOURCES DEFENSE COUNCIL, INC. AND SIERRA CLUB
IN SUPPORT OF PLAINTIFF-APPELLEE UNITED STATES**

Natural Resources Defense Council (“NRDC”) and Sierra Club
(collectively, “Citizen Groups”), move for leave to file an Amicus Curiae brief in
support of Plaintiff-Appellee United States in the aforementioned case. The
United States consents to Citizen Groups’ filing an Amicus Curiae brief. Citizen
Groups contacted Defendant-Appellant Detroit Edison to ask for its consent to file.
Detroit Edison informed Citizen Groups that it takes no position on the filing of an
Amicus Curiae brief.

I. Citizen Groups Have a Significant Interest in the Outcome of this Case.

This case implicates air pollution issues that are central to Citizen Groups' advocacy efforts and goals.

NRDC is a national, not-for-profit membership organization committed to the preservation, protection, and defense of the environment, public health, and natural resources. For more than forty years, NRDC has engaged in scientific analysis, public education, advocacy, and litigation on a wide range of environmental and health issues. NRDC has long been active in efforts to reduce the threats to human health and the environment from air pollution emitted by coal-fired power plants. NRDC has more than 357,000 members nationwide, including more than 9,500 members in Michigan.

Sierra Club, an incorporated not-for-profit, is the nation's oldest and largest grassroots environmental organization. Its mission is to preserve, protect, and enhance the natural environment. Sierra Club has more than 619,000 members nationwide, including more than 17,200 members in Michigan. Sierra Club works to protect and improve air quality and to promote the development of energy efficiency and renewable energy sources. Sierra Club's Beyond Coal Campaign seeks to retire old coal plants that are the worst contributors to health-harming soot and smog pollution and replace them with cleaner energy solutions.

Citizen Groups both have long histories of working to reduce air pollution, seek the installation of controls on aging coal-fired power plants, and defend and strengthen the CAA. Citizen Groups have defended the NSR program from legislative and litigation attempts to weaken or eliminate it, and they have challenged inadequate NSR regulations. In addition, Citizen Groups were parties in the federal government's landmark NSR enforcement litigation against American Electric Power's coal-fired power plant fleet, and Sierra Club has over the past five years pursued NSR enforcement actions against coal plants in Michigan, Ohio, Wisconsin, and other states.

In Michigan, Citizen Groups have sought to ensure compliance with, and enforcement of, the requirements of the NSR program through CAA Title V Renewable Operating Permit proceedings. In recent years Citizen Groups have filed comments on draft Title V permit renewals for Detroit Edison's Belle River/St. Clair, Trenton Channel, and River Rouge plants, and Consumers Energy's B.C. Cobb plant, identifying modifications at each of these facilities that Citizen Groups believe should have triggered NSR requirements. Citizen Groups have petitioned U.S. EPA to object to two of these permits that were finalized.

Citizen Groups were intervening parties in this proceeding when it was before the District Court. Citizen Groups strongly believe that the District Court's holding is inconsistent with the requirements of the CAA and, if affirmed by this

Court, could render the NSR provisions virtually unenforceable. Unless this Court reverses the District Court decision, it is likely that more coal plants will continue to operate without modern pollution controls, and Citizen Groups' members who live near or downwind of such coal plants would be adversely impacted by the continued pollution from plants such as Monroe.

II. Citizen Groups' Amicus Curiae Brief is Desirable Because Citizen Groups Have a Viewpoint that is Complimentary to, but also Unique from, that of the United States.

Citizen Groups' Amicus Curiae Brief underlines how the District Court ruling conflicts with several fundamental principles of the CAA, including the Act's commitment to public participation. Citizen participation is a central component of the CAA that helps ensure that the Act's provisions are enforced. As noted above, Citizen Groups regularly bring federal court action under the citizen suit provisions to enforce provisions of the NSR program. If affirmed, the District Court decision could frustrate Citizen Groups' statutorily authorized ability to play a meaningful role in NSR implementation and enforcement. As groups that regularly utilize the public participation provisions of the CAA, Citizen Groups are uniquely situated to discuss this critical issue, which is highly relevant to the disposition of this appeal.

III. Conclusion

For the foregoing reasons, Citizen Groups' request that this Court grant leave to file an Amicus Curiae brief.

Respectfully submitted,

/s/ Jessie J. Rossman

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DATE: February 24, 2012

CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that, on this 24th day of February, 2012, I caused the foregoing Brief Amicus Curiae of Natural Resources Defense Council and Sierra Club in Support of Plaintiff-Appellee United States to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit through the Court's CM/ECF system. All registered CM/ECF users will be served by the Court's CM/ECF system.

DATE: February 24, 2012

/s/ Jessie J. Rossman

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